

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal State Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review -	)	CC Docket No. 98-171
Streamlined Contributor Reporting	)	
Requirements Associated with Administration	)	
of Telecommunications Relay Services, North	)	
American Numbering Plan, Local Number	)	
Portability, and Universal Service Support	)	
Mechanisms	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Petition of the Rural Independent Competitive	)	WC Docket No. 11-851
Alliance for Declaratory Ruling	)	

**REPLY COMMENTS OF SUMMIT BROADBAND INC.**

Summit Broadband Inc. (Summit) offers these Reply Comments On the *Petition of the Rural Independent Competitive Alliance (RICA) for a Declaratory Ruling* Regarding Imputation of Interstate Revenue as described in the Commission's Public Notice, released May 9, 2011.<sup>1</sup>

Summit is a competitive local exchange carrier (CLEC), certificated in the State of Florida, offering telecommunications, cable television and broadband Internet services to end-user customers. Summit received a Letter of Inquiry from USAC in 2010 instructing the company to revise its 2010 Form 499-A submission to report 100 percent of revenues received from a "federal subscriber line charge" as interstate on line 405 of the FCC Form 499-A.

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<sup>1</sup> Public Notice, Wireline Competition Bureau Seeks Comment on a *Petition for Declaratory Ruling Filed by the Rural Independent Competitive Alliance (RICA)*, WC Docket No. 06-122 (filed April 26, 2011) (RICA Petition).

Summit strongly supports the Petition for Declaratory Ruling filed by RICA. A Declaratory Ruling clarifying the imputation of interstate revenue on the Form 499 is needed; this is an issue that has created a great deal of confusion and concern for CLECs, as well as causing CLECs financial harm as a result of USAC's efforts to "enforce" the instructions on the Form 499 regarding reporting of subscriber line charge revenue.<sup>2</sup>

### **FORM 499-A INSTRUCTIONS DO NOT CONSTITUTE A LEGAL OBLIGATION**

Summit agrees with RICA and commenters Grande Communications Networks, LLC (Grande) and the United States Telecom Association (USTelecom) that these Instructions to the Form 499-A do not constitute a "binding legal obligation or mechanism"<sup>3</sup> that compels CLECs to report on FCC Form 499-A end user revenues designed to recover the costs of providing local exchange service as interstate revenues.

Summit agrees with Grande's Comments, "that CLECs are not obligated to charge and collect an interstate SLC nor are CLECs required to identify and apportion their purely intrastate revenues into interstate and intrastate segments."<sup>4</sup> Further, Summit agrees with USTelecom's Comments that "the instructions for Form 499-A undergo no notice and comment process pursuant to the Administrative Procedures Act and thus cannot impose substantive obligations on carriers

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<sup>2</sup> The 2011 Instructions to the FCC Form 499-A, page 15, states, "Line 404 should not include subscriber line charges levied under a tariff by the filer or placed on customer bills as a pass-through of underlying carrier subscriber line charges. Filers should instead report such revenues on line 405. Note that federal subscriber line charges typically represent the interstate portion of fixed local exchange service; these amounts are separate from toll revenues and correspond to the revenues received by incumbent telephone companies to recover part of the cost of networks that allow customers to originate and terminate interstate calls."

<sup>3</sup> *Petition of the RICA Members for Declaratory Ruling Regarding Imputation of Interstate Revenue*, WC Docket No. 06-122 (filed April 26, 2001), p. 1.

<sup>4</sup> Comments of Grande Communication Networks, LLC (Grande Comments), p. 2.

beyond those authorized in the Commission's rules."<sup>5</sup> Summit supports USTelecom's conclusion that, "Only properly adopted rules can impose substantive obligations on carriers; form instructions alone cannot."<sup>6</sup>

**CLECS ARE NOT REQUIRED TO ASSESS A FEDERAL SLC; USAC LACKS  
AUTHORITY TO REQUIRE CLECs TO REPORT INTRASTATE REVENUES AS  
INTERSTATE**

Summit also agrees with Grande's Comments and RICA's Petition that, "CLECs are not obligated to charge and collect an interstate subscriber line charge (SLC) nor are CLECs required to identify and apportion their purely intrastate revenues into interstate and intrastate segments."<sup>7</sup>

Summit agrees with Grande that CLECs have great latitude in designing their service cost recovery methods<sup>8</sup> and that CLECs are not subject to the FCC Part 69 rules mandating that incumbent local exchange carriers collect a subscriber line charge.<sup>9</sup>

Summit agrees with Grande that, "Neither USAC nor the FCC can compel a CLEC to reclassify intrastate revenues to the interstate jurisdiction."<sup>10</sup> As stated previously, RICA's Petition contends that there is no "binding legal obligation or mechanism" that compels CLECs to report on FCC Form 499-A end user revenues designed to recover the costs of providing local exchange service as interstate revenues. As Grande states, "A CLEC may determine that none of its local exchange revenues include a component of the cost of providing interstate service.

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<sup>5</sup> Comments of The United States Telecom Association (USTelecom Comments), p. 4.

<sup>6</sup> USTelecom Comments, p. 4.

<sup>7</sup> Grande Comments, p. 2; RICA Petition, p. 6.

<sup>8</sup> Grande Comments, pp. 4-5.

<sup>9</sup> Grande Comments, pp. 3-4.

<sup>10</sup> Grande Comments, p. 5.



Similarly, a CLEC may decide that its per-minute access charges are sufficient to compensate it for the cost of providing interstate service, such that there is no need to collect an “interstate component” via other service revenues.”<sup>11</sup>

Summit also agrees with Grande’s Comments that, “Neither USAC nor the FCC can compel a CLEC to reclassify intrastate revenues to the interstate jurisdiction.”<sup>12</sup>

### **CONCLUSION**

Summit supports RICA’s Petition and the Comments filed by Grande and USTelecom. Summit contends, like Grande,<sup>13</sup> that CLECs are not required to assess a federal SLC on their customers and that USAC lacks authority to compel CLECs to report on their Form 499-A a portion of their revenues that were designed as intrastate rates to recover intrastate costs as attributable to an interstate SLC.

Respectfully Submitted,



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Art Haas  
Vice President of Finance  
Summit Broadband Inc.

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<sup>11</sup> Grande Comments, p. 5.

<sup>12</sup> Grande Comments, p. 5.

<sup>13</sup> Grande, p. 6.